

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0026, John J. Gosselin v. Commissioner, New Hampshire Department of Corrections, the court on June 5, 2007, issued the following order:

The petitioner, John J. Gosselin, appeals an order of the trial court dismissing his petition for writ of mandamus that sought to compel the commissioner of corrections to provide him with a diet that was compliant with Islamic law. He argues that the trial court erred in: (1) failing to consider RSA 622:7, III and Cor 301.03 (m) and (2) failing to find that the commissioner's action substantially burdened his religious activities. We affirm.

In reviewing a trial court's ruling on a motion to dismiss, we consider whether the petitioner's allegations are reasonably susceptible of a construction that would permit recovery. Thorndike v. Thorndike, 154 N.H. 443, 446 (2006). A writ of mandamus is used to compel a public official to perform a ministerial act that the official has refused to perform, or to vacate the result of the public official's act that was performed arbitrarily and in bad faith. Petition of CIGNA Healthcare, 146 N.H. 683, 687 (2001). The court will, in its discretion, issue a writ of mandamus only where the petitioner has an apparent right to the requested relief and no other remedy will fully and adequately afford relief. Id. When an official is given discretion to decide how to resolve an issue before him, a mandamus order may require him to address the issue, but it cannot require a particular result. Rockhouse Mt. Property Owners Assoc. v. Town of Conway, 127 N.H. 593, 602 (1986). We exercise our discretionary power to issue extraordinary writs "with caution and forbearance and then only when the right to relief is clear." CIGNA, 146 N.H. at 687.

Because the commissioner has discretion to determine how to address substitutions in special inmate diets for religious purposes and has done so, we affirm the decision of the trial court to dismiss the petition for writ of mandamus. See Thorndike, 154 N.H. at 446. We limit our analysis to whether the trial court correctly dismissed the petition for writ of mandamus. We express no opinion as to the merits of the petitioner's underlying claim.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**